

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
KIM PATRICK, :
Plaintiff, : 17-CV-06846 (PKC)
:
v. : 225 Cadman Plaza East
: Brooklyn, New York
:
SUCCESS ACADEMY INC., et al. : February 28, 2018
:
Defendant. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: SARAH E. DRANOFF, ESQ.
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1 (Proceedings began 3:51 p.m.)

2 THE COURT: This is Docket No. 17-CV-06846, Patrick
3 v. Success Academy.

4 Can counsel please state their appearances for the
5 record?

6 MS. DRANOFF: Sarah Dranoff, Brooklyn Legal Services
7 for plaintiff.

8 MS. BEDARD: Nancy Bedard, Brooklyn Legal Services
9 for plaintiff.

10 MR. LAVIGNE: Christopher Lavigne for Success
11 Academy and the rest of the defendants.

12 MS. BIONDO: Vanessa Biondo with Success Academy for
13 defendants.

14 MR. SAFANE: Aaron Safane, defendants.

15 THE COURT: Thank you. Okay. So I have both of
16 your letters, read them both. Who would like to start off? I
17 guess whose motion is it actually?

18 MR. LAVIGNE: Is it -- I -- we submitted the letter,
19 so we'll start off.

20 THE COURT: So you can start. Yeah, sure.

21 MR. LAVIGNE: Our position is pretty
22 straightforward. I think we -- and we made some discovery.
23 You -- it's not real discovery but we produced documents
24 pursuant to a preliminary judgment -- a preliminary injunction
25 motion, fairly voluminous. Judge Chen issued a decision on

1 that and instructed us two things. One, if discovery, further
2 discovery, is contemplated to see a magistrate judge about it,
3 and if none is further contemplated to make a dispositive
4 motion.

5 Our position, two points on that. One, plaintiffs
6 have yet to describe what documents they want. During our
7 first initial conference we asked, you know, give us a list of
8 what sort of documents you want, and, you know, we'll figure
9 out what that means. And two, we intend to make a motion to
10 dismiss which we think will be dispositive substantively and
11 jurisdictionally. And we think that, you know, any further
12 discovery on both sides -- you know, they're not the only ones
13 that would like discovery. It makes sense to, you know, pause
14 that and -- you know, pause that for the teachers for the
15 student and the parents involved pending a decision on that
16 what we think would be dispositive motion.

17 THE COURT: Okay. Thanks.

18 MS. DRANOFF: To respond, first of all, we were not
19 asked for a list of documents that we were -- wanted produced.
20 We didn't get to that place at all. We simply had the initial
21 conference where we discussed dates and we proposed dates.
22 That's sort of standard in my experience, a discovery
23 schedule. And the response that we got from counsel, not that
24 day but a week later, was that they thought it was not
25 necessary. They didn't want to go to that place. They wanted

1 to have settlement discussions. And then intend at some point
2 in the future to make a -- to file a motion to dismiss.

3 But the case was filed in November. We have yet to
4 see an answer or a motion. They've talked a lot about filing
5 a motion to dismiss but haven't produced anything or prepared
6 anything or filed it. And I don't think it merits staying
7 discovery before we've -- before anything has been filed, you
8 know, pending a theoretical motion to be filed sometime in the
9 future.

10 Secondly, you know, we'll be glad to provide a list
11 of documents once we've entered into a -- you know, put
12 together a report and come up with a basic schedule for
13 discovery which, of course, could be, you know, revised as
14 appropriate over time. There's no basis for defendants to
15 claim that they would be burdened by discovery when they don't
16 even know what we would be asking for. Nothing's been asked
17 yet.

18 THE COURT: Okay.

19 MR. LAVIGNE: I guess that's the point, though.
20 It's hard for us to blindly enter into a discovery schedule --
21 which one of the dates was March 14th that was originally
22 proposed -- when, one, settlement was going on. Number two,
23 we don't know what it is that you want. We don't -- I didn't
24 think it would be appropriate for us to sort of come into
25 court saying, yeah, these are the dates we agreed upon. We

1 don't know what they want. So, you know, it's hard for us to
2 say we'll get that. And it's not so easy. I mean Judge Gold
3 in similar case made a very specific point that, you know, we
4 are bound by FERPA, by other federal and state regulations to
5 sort of undergo this thorough redaction so that information
6 about our students isn't inadvertently disclosed.

7 THE COURT: Is that what you're most concerned
8 about? Is -- that's where the burden would be?

9 MR. LAVIGNE: You know, it's hard to say what we're
10 concerned about. The main thing we're concerned about is if
11 we're talking about depositions and things like that or
12 medical examinations we just don't think -- we're not saying
13 that that isn't something everybody's entitled to. We're just
14 saying that it makes sense to sort of key that off a
15 reasonable schedule pending a motion to dismiss decision
16 because we don't think the case is going to be going forward.
17 Regarding document discovery, that's certainly what we're
18 concerned about.

19 THE COURT: Do you think the case is not going to go
20 forward on any claim or just on certain claims?

21 MR. LAVIGNE: On any claim.

22 THE COURT: And is that based on your research or
23 what Judge Chen said or what?

24 MR. LAVIGNE: Both. We think substantively sort of
25 the due process claims really focus on two factual issues and

1 we think it -- which are suspensions longer than 10 days.
2 That's sort of how Judge Chen started her opinion. Those have
3 only happened in two instances, one in February 2017, one in
4 September 2017. Judge Chen is -- the idea that State Law 3214
5 is no longer in the case, the only issue is whether under GASS
6 [Ph.] and the IDA we provided -- Success provided adequate due
7 process. That's a fluid concept. GASS is not specific. It
8 just says more thorough process is needed. Several other
9 courts, including EDNY, has said that doing what we did, which
10 was provide an -- a reasonable notice at a quick hearing and
11 an opportunity to be heard, present witnesses, to confront
12 witnesses, and present evidence is sufficient process for
13 these longer-term suspensions.

14 Secondly, more fundamentally, cases say that there's
15 no property right to provide a student alternative with
16 alternative education services or provide it while a student
17 is suspended. And then sort of the rest of the issues which
18 concern, you know, the Rehabilitation Act, the ADA, those
19 issues concern students free and appropriate public education
20 and we, the defendants, take the position that without
21 exhausting their administrative remedies, the Court just
22 doesn't have jurisdiction to hear those cases -- to hear those
23 claims.

24 THE COURT: Which claims again?

25 MR. LAVIGNE: I don't know the exact counts by the

1 Rehabilitation Act claims and the ADA claims.

2 THE COURT: And what kind of exhaustion do you think
3 needs to be done?

4 MR. LAVIGNE: The Second Circuit and several courts
5 in the EDNY have said that there's two administrative bodies
6 you need to have your claim heard before coming to federal
7 court. One, an impartial hearing office --

8 THE COURT: Right.

9 MR. LAVIGNE: -- subject to part of the DOE, and
10 then, two, a stay review officer from the SED, the State
11 Education Department.

12 THE COURT: Right.

13 MR. LAVIGNE: And in this case, the plaintiffs have
14 not gone to the SED and admitted that -- admittedly so they
15 had not gone to the SED, so we don't think those claims stand.
16 There is two other remaining state court claims and
17 substantively we think those should be dismissed for the same
18 reasons that our federal claims would be but also because --
19 for a more fundamental reason. We were never given notice of
20 claim which is required under state law, and that's something
21 only a state court can hear and excuse.

22 MS. DRANOFF: Well, first of all, with respect to
23 the property right, the cases that Judge Chen cited to were
24 from the Fifth Circuit, and we don't -- the way that her
25 decision was written indicates that that's not the end of the

1 inquiry. We have -- you know, obviously disagree about that
2 position and -- that defendants have adopted, and there's much
3 more briefing to be done on that issue in particular. With
4 respect to exhaustion --

5 THE COURT: Are there factual issues there? I'm
6 sorry to interrupt.

7 MS. DRANOFF: Factual issues with regard --

8 THE COURT: Uh-huh.

9 MS. DRANOFF: Not that I believe.

10 THE COURT: Okay. Because one of the things I want
11 to clarify is whether there are factual issues for the claims
12 that you're talking about. So for the due process, the
13 property right, there's no factual issue at this point? It's
14 more a legal issue?

15 MS. DRANOFF: That's a legal issue in my opinion.

16 THE COURT: So you don't need discovery on that?

17 MS. BEDARD: May I speak?

18 THE COURT: Sure.

19 MS. BEDARD: Well, I do believe the discovery on
20 some of the factual issues -- or many of them -- some of the
21 claims there's claims of discrimination and retaliation.

22 THE COURT: Right, I just meant on the -- on the due
23 process property interest.

24 MS. BEDARD: On the due process? Well, right now
25 I'm already hearing a conflict in the facts because I am

1 positive that my client did not actually, in fact, have a
2 hearing. So the student was suspended for 45 days on the
3 first suspension and there was no hearing whatsoever. So
4 right there --

5 THE COURT: I'm sorry. Is there a dispute about
6 that?

7 MS. BEDARD: Yeah.

8 THE COURT: No dispute about that?

9 MR. LAVIGNE: I mean we disagree.

10 THE COURT: Okay.

11 MR. LAVIGNE: We think that basically our bottom
12 line is on the pleadings alone there is -- we do -- we were
13 not -- we don't think there's a factual issue. We think based
14 on the pleadings alone due process was provided whether a
15 hearing was ever held in the first place, in the first
16 instance in March or not, due process [inaudible] provided for
17 a variety of reasons, including that they sort of appealed
18 that to an impartial hearing officer. That impartial hearing
19 officer said -- had some issues with our process for issuing
20 an IES. We changed it. Then had -- the second time it
21 happened had a full-blown hearing. We think all of that
22 regarding process is in the pleadings. The property interest
23 part of it also is in the pleadings.

24 MS. BEDARD: I --

25 THE COURT: Is there -- is there more that you need

1 than what's in the pleadings?

2 MS. BEDARD: On the issue of the suspensions, the
3 two suspensions? At this point, I'm not positive, but there
4 -- I would have to think about that for a few moments.

5 THE COURT: Okay.

6 MS. BEDARD: Because we seem to be having a dispute
7 about when there was a hearing, if a hearing occurred, and I
8 don't particularly believe that there was a hearing. On the
9 second issue, I think we made clear that the hearing failed to
10 provide due process. And also the hearing had no recording
11 whatsoever, so there was no opportunity whatsoever to file an
12 appeal in any administrative body. So --

13 THE COURT: What I'm trying to look at, and maybe
14 you can help me with this, is whether or not discovery is --
15 the goal is to get this queued up so that -- you say that your
16 client's being prejudiced by delay. You, I'm sure, would like
17 to get this resolved just as quickly. So what I'm trying to
18 see is is there a way that we can get this resolved quickly?
19 And in order to do that which claims, if any, require
20 discovery?

21 MS. DRANOFF: If I could respond. On our
22 discrimination claims, we need discovery.

23 THE COURT: Okay.

24 MS. DRANOFF: That's really not been fully briefed
25 at all in the preliminary injunction brief, so that's not

1 something that we've had much discussion about. But we --

2 THE COURT: Is that the ADA and the 504 claim?

3 MS. DRANOFF: Yes. And we'd be looking for document
4 discovery with relation to those.

5 THE COURT: Uh-huh. And with respect to what the
6 defendants say about exhaustion being required, is there
7 discovery that's needed on that point or is that not
8 necessary?

9 MS. DRANOFF: I think that's a --

10 THE COURT: A legal issue?

11 MS. DRANOFF: Mainly a legal issue, yes.

12 THE COURT: Okay. So the GASS, the idea claim, are
13 there any -- is there any discovery that's needed for that?

14 MS. DRANOFF: The GASS claim?

15 THE COURT: Uh-huh.

16 MS. DRANOFF: Well, yes, there's document discovery
17 that we would like with respect to the suspensions that the
18 school has imposed. Not only on our client -- and this goes
19 to our discrimination claims, as well. But based on things
20 that even what counsel said in open court during the argument
21 before Judge Chen, it appears that there's -- that there's
22 very limited circumstances in which long-term suspensions have
23 been imposed by defendants other than on our client, and it's
24 not clear what the criteria are. There's very little
25 information in terms of guidelines or policies or anything

1 that's provided to parents to indicate when those kinds of
2 punitive measures will be -- or not -- will not be taken. And
3 to develop the claims we need to see more about that. I mean
4 I don't know that -- obviously, we're aware that FERPA would
5 be an issue, but it can't be a vast body of documents that
6 would need to be redacted in order to satisfy that.

7 THE COURT: So if we were to talk about what it is
8 you're looking for in discovery, would you be able to go
9 either by claim or by --

10 [Pause in proceedings.]

11 THE COURT: Yeah, he will tell you where to go.

12 So we could either do it by claim or just by
13 categories of discovery that we need. Then we can try to
14 figure out what makes sense and what doesn't make sense.

15 MS. DRANOFF: It would be easy for us by categories
16 of discovery that we need. Does that sound right?

17 THE COURT: And if you think you need more time than
18 what you have right now to think about it or both sides to
19 talk about, you know, the negotiation as to what it would be
20 if discovery were allowed, you can do that as well.

21 MS. DRANOFF: I think that would be more fruitful.

22 THE COURT: Okay.

23 MS. DRANOFF: But I would say that we are certainly
24 looking for policy statements or guidelines that would be
25 provided to defendant's staff and their -- anyone who might be

1 presiding over hearings such as they are or conferences.

2 We've not seen anything of that nature.

3 THE COURT: Okay. So that would not have anything
4 to do with individual student's records or --

5 MS. DRANOFF: That's right.

6 THE COURT: -- redactable information.

7 MS. DRANOFF: That's right.

8 THE COURT: Okay.

9 MS. DRANOFF: And also policies and guidelines that
10 are provided to staff regarding calling 911 and bringing EMS
11 in to -- for a student. Because there was a claim and an
12 issue in our case regarding the threats of sending our
13 plaintiff's child to the hospital emergency room when no
14 medical emergency was present and also he was actually removed
15 to the emergency room when there was no medical emergency.

16 THE COURT: So you're looking for the discovery --
17 you're looking for policies so far?

18 MS. DRANOFF: Yes.

19 THE COURT: What else?

20 MS. BEDARD: Communications.

21 MS. DRANOFF: Communications. We'd like
22 communications between the school and the -- and the
23 Department of Education --

24 THE COURT: Okay.

25 MS. DRANOFF: -- regarding A.G., the plaintiff, as

1 well as communications among staff and administrators
2 regarding A.G., much of which I understand that, you know,
3 there are many communications that were produced in -- by
4 defendants regarding the -- you know, in response to the
5 preliminary injunction motion. But there are other kinds of
6 electronically spread information and other communications we
7 would be seeking.

8 THE COURT: Would that involve other students or not
9 necessarily?

10 MS. BIONDO: It might depending --

11 THE COURT: It might.

12 MS. BIONDO: -- on the communication.

13 MR. LAVIGNE: Probably.

14 THE COURT: Yeah. So that's something you'd have to
15 check and see, right?

16 MS. BIONDO: Yes, it would -- it would be a very
17 large undertaking to pull because not every communication that
18 exists is necessarily only about A.G., right. So for example,
19 somebody on our staff may be communicating with somebody at
20 the DOE about a bunch of different issues involving a bunch of
21 different students. I'll let Mr. Lavigne continue, but the
22 bottom line is it's a very large undertaking for a case that
23 we think is going to go away.

24 MR. LAVIGNE: I guess I'm just a little confused
25 because, you know, that's like -- that -- we're basically just

1 talking about full-blown discovery. And if we wanted to
2 engage in sort of exchange of communications then we would --
3 then we should undertake full-blown discovery. I think our
4 position is that these communications -- I'm not -- you know,
5 that -- there's, you know, at any given time dozens of
6 employees at the network and at the school level communicating
7 with the DOE regarding students including A.G.

8 It's not as simple as just saying, you know,
9 communications from -- you know, the principal or, you know,
10 X, Y, and Z. We would -- we would need a list of, like,
11 custodians that we were talking about here. To me that gets
12 into -- you know, for the policy statements, you know, we're
13 happy to give those over to the extent we have those. That is
14 not a big [inaudible] at all, and I think, you know, to some
15 extent you have some of that from the preliminary injunction
16 motion, and we can search for the rest of them and give them.

17 THE COURT: Okay.

18 MR. LAVIGNE: Yeah, and that -- and that's sort of
19 our position on that. The -- when we get -- start to delve
20 into communications, you know, if -- I don't -- I don't see
21 how that relates to the legal issues of a motion to dismiss on
22 substantive and jurisdictional grounds. You know, I would get
23 it if it was a summary judgment.

24 MS. BEDARD: We have --

25 MR. LAVIGNE: But it's not.

1 MS. BEDARD: We have filed a case and we are just
2 trying -- we are engaging in discovery as we believe that all
3 plaintiffs have a right to. There is no motion to dismiss
4 pending. We've never --

5 MR. LAVIGNE: But Judge Chen did instruct us to make
6 dispositive motions, one of which would be a motion to
7 dismiss.

8 MS. BEDARD: And it has never been filed, so we need
9 to continue discovery, and we need to continue to work on the
10 case so that it has a resolution. We are working towards a
11 resolution or we're working towards a trial. And so my point
12 is that I don't understand why we are -- I'm not in agreement
13 that this should be delayed. I'm feeling that it should be
14 all moving forward and if at any point you would like to file
15 a motion to dismiss I'm sure you will contact the Court and
16 all that can be done. I'm not clear on why we would not be
17 giving this information to you. We were happy to give this
18 information to you. It would have been on Rule 26(f) so we
19 were very prepared to give you a list of the things that we
20 want.

21 MS. BIONDO: If I may. I did ask on the initial
22 conference -- I'm not sure, I know Nancy was on it. I'm
23 positive because I was the one who said it, I asked what you
24 guys were contemplating because I said we're disinclined to
25 give you anything. Not only did you not articulate at that

1 time what the discovery was. You can't even articulate it
2 today. The reason that we believe, Nancy, we -- Ms. Bedard,
3 that we should not go forward is because we are going to file
4 a motion. We were truly, genuinely hopeful that we were going
5 to settle the case based on the discussions that took place in
6 front of Judge Chen. We thought we were very close. When we
7 got your seven-page demands list we realized that we were not
8 so close. We've worked with you over the past few weeks to
9 try to get closer but unfortunately we're not there yet.

10 And it -- unfortunately it looks like we are going
11 to have to go forward with filing a motion to dismiss. When
12 we file -- so if we start with discovery now and file a motion
13 to dismiss by the end of March all that is going to happen is
14 that whatever discovery schedule you want to enter now is
15 going to be undone because we are going to say when we file a
16 motion to dismiss let's stop. These basic policy statements
17 we're happy to provide you but to ask us to go through the
18 incredibly onerous task of pulling all the communications,
19 redacting them, and having to do it very carefully or to risk
20 violating FERPA and violating another child's rights is not
21 something that we can, you know, easily agree to. It just
22 isn't.

23 THE COURT: Okay. So let me -- let me make a
24 proposal here. Two things, number one, if you really want to
25 do -- make a motion to dismiss I think you would need to write

1 up your motion and letter to Judge Chen.

2 MR. LAVIGNE: Sure.

3 THE COURT: I think she wants to, you know, review
4 this and get a sense of whether or not she thinks, you know,
5 it make sense to go ahead with these motions.

6 MS. BEDARD: Okay.

7 THE COURT: That's number one. Number two is I
8 think it would be helpful to just get a list from the
9 plaintiffs or the plaintiff as to what it is that you're
10 really looking for, and then we can try to figure out what is
11 onerous, what's not onerous. You know, the policy statements
12 are pretty easy. I don't think you're going to much --

13 MS. BIONDO: No.

14 THE COURT: -- of an objection about that. And
15 let's find out what it is that you disagree about for the
16 discovery and how it is relevant to the motion as it goes
17 forward. And if it's relevant to a motion or if a motion to
18 dismiss doesn't make sense on a particular point because of,
19 you know, the potential factual disputes and it's best to move
20 expeditiously to get a summary judgment motion that's what
21 we'll focus on. Or if a motion to dismiss makes more sense
22 and it doesn't make sense to do -- or at least on some claims
23 but not on other claims it doesn't make sense to do discovery
24 then we'll do that.

25 The third thing is you've talked about settlement.

1 And so there are two ways the Court can be helpful. Number
2 one, we can have a settlement conference. And number two, we
3 have mediators. Number three, you can do the mediator first
4 and then come back for a settlement conference, but whatever.
5 Those are the possibilities. The Court is more than willing
6 to help you with that. And if you think -- you know, I think
7 you should all maybe take a step back, think about it for 24
8 hours, and then send me a letter and let me know what you want
9 to do about settlement.

10 MR. LAVIGNE: Okay.

11 THE COURT: Okay? Because you don't have to do it
12 on your own. I mean we've had a lot of [inaudible] cases here
13 and a lot of other cases. There may be some issues here that
14 are different about this case, but I just don't think it's
15 going to be something that would be impossible at least to
16 discuss. We also have really great mediators too. So either
17 way is good.

18 How much time do you need to figure out what
19 discovery you want?

20 MS. DRANOFF: I think we could get a list to you by
21 Friday.

22 THE COURT: Friday? Does that sound fine? Fine
23 with you?

24 MR. LAVIGNE: That's fine.

25 THE COURT: Okay. And why don't you look at --

1 after you get that why don't you meet and confer and see if
2 there's anything that you're willing to provide because we
3 could have targeted -- you know, staged discovery and then
4 targeted towards a motion.

5 MR. LAVIGNE: Sure.

6 THE COURT: Or not depending on what the dispute is.

7 MR. LAVIGNE: Okay.

8 THE COURT: And I think what we'll do is we'll
9 schedule a conference for early next week I think probably
10 makes the most sense so we don't lose any time on this.

11 MR. LAVIGNE: Okay. Great.

12 MS. DRANOFF: Okay.

13 THE COURT: Because I think -- I think that it's
14 important to get this case really moving at this point. Does
15 that makes sense to both sides?

16 MS. DRANOFF: Thanks.

17 MS. BIONDO: Yeah.

18 THE COURT: [Inaudible] next week?

19 MR. LAVIGNE: Yeah, that's right. Should -- you
20 mentioned the pre-motion letter. You know, I agree that it --
21 it's something we should do. The one reason we hadn't done
22 that yet is in light of her order we sort of -- we took that
23 as an indication that we should move forward. She had asked
24 for a briefing schedule to be entered. She, Judge Chen, had
25 asked for a briefing schedule to be entered by January 12th.

1 When -- we wrote the letter to you before that so -- and we
2 considered that --

3 THE COURT: Right.

4 MR. LAVIGNE: -- sort of dropping that deadline.
5 We're happy to write the pre-motion letter. We're just -- I'm
6 just wondering whether that should be something that's done
7 sort of simultaneously or with -- or should we wait for
8 [inaudible] --

9 THE COURT: Well, [inaudible] and --

10 MR. LAVIGNE: Yeah, right.

11 THE COURT: -- [inaudible] want to do the motion.

12 MR. LAVIGNE: Yeah, right.

13 THE COURT: Would you -- would that make sense if
14 we're going to try to do settlement that we would try to do
15 that first and then go into the motion practice in their
16 letter?

17 MS. DRANOFF: That's reasonable.

18 THE COURT: Okay. So let's [inaudible] that out
19 next week then.

20 MR. LAVIGNE: Okay.

21 THE COURT: I have arraignments. I mean I have to
22 do some criminal work next week. So that means that it's hard
23 to actually schedule a time, but we're going to try to do
24 that. We can do it by phone or in person, whichever is better
25 for you.

1 MR. LAVIGNE: Okay.

2 MS. BIONDO: We appreciate that.

3 MS. DRANOFF: Whatever.

4 THE COURT: Would you rather do it by phone or by --
5 in person?

6 MS. BEDARD: In person.

7 THE COURT: In person?

8 MS. BEDARD: I would prefer.

9 THE COURT: Okay.

10 MS. BEDARD: We're right down the block.

11 THE COURT: Okay. Okay.

12 MR. LAVIGNE: That's fine with us.

13 THE COURT: All right. So what looks good next
14 week? I think we have Monday through Thursday. It gets worse
15 as the week goes on.

16 THE CLERK: [Inaudible].

17 THE COURT: With arraignments?

18 UNIDENTIFIED: [Inaudible]

19 THE COURT: I have -- well, we'll give it a try.

20 MR. LAVIGNE: I mean we could do that or --

21 THE COURT: Okay. You may have to wait a few
22 minutes.

23 THE CLERK: Tuesday or Wednesday.

24 THE COURT: Oh, let's do Tuesday because Tuesday
25 will be less.

1 MS. DRANOFF: Sorry, did you say 11:30 on Tuesday?

2 THE COURT: What's --

3 THE CLERK: 11:30.

4 (Phone ringing)

5 THE COURT: Let me take that.

6 [Pause in proceedings.]

7 THE COURT: Okay.

8 MS. BIONDO: Thank you very much.

9 THE COURT: That's it. Anything else?

10 MR. LAVIGNE: I think that's it.

11 THE COURT: Okay. But think -- or think really hard
12 about settlement because it sounds like it's something both
13 sides would probably like because motion practice is going to
14 take some time, discovery will take some time, and both sides
15 really need a resolution quickly.

16 MS. BIONDO: We would be happy -- we would be happy
17 to settle.

18 THE COURT: All right.

19 MS. DRANOFF: Thank you.

20 (Proceedings concluded at 4:22 p.m.)

21 * * * * *

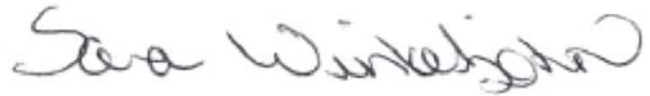
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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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7 Sara Winkeljohn, CET-808

8 Dated: March 5, 2018
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